

ST 05-22

Tax Type: Sales Tax

Issue: Exemption From Tax (Charitable or Other Exempt Types)

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

ABC ORGANIZATION,

Applicant

v.

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

No. 05 ST 0000

Denial of Sales Tax Exemption

Mimi Brin

Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

Appearances: Shepard Smith, Special Assistant Attorney General, for the Illinois Department of Revenue

Synopsis:

The *ABC* Organization (hereinafter “*ABC*” or the “Applicant”) sought an exemption from the application of tax under the Illinois Retailer’s Occupation Tax Act (35 **ILCS** 120/1 *et seq.*) (hereinafter “**ROTA**” or “**ROT**”) and the Illinois Use Tax Act (35 **ILCS** 105/1 *et seq.*) (hereinafter the “**UTA**” or the “**UT**”) as an entity organized and operated exclusively for charitable purposes. 35 **ILCS** 120/2-5; 105/3-5 The Department denied applicant’s request twice, with *ABC* formally protesting and requesting a hearing following the Second Denial of Sales Tax Exemption. A hearing was held whereat oral and documentary evidence was received. Following the submission of all evidence and a review of the record, it is recommended that this matter be resolved in favor of the Department and the following Findings of Fact and Conclusions of Law are made in support of this recommendation:

Findings of Fact:

1. The *ABC* Organization requested an exemption identification number (35 ILCS 120/1g) from the Department on the basis that it was exempt from taxes imposed by the ROTA and the UTA as an entity organized and operated exclusively for charitable purposes. Department Ex. No. 1 (Second Denial of Sales Tax Exemption) The Department denied the request. Id.
2. *ABC* is incorporated, as of May 25, 2001, in the State of Illinois under the General Not For Profit Corporation Act of Illinois. Applicant Ex. No. 1, p. 1 The Articles of Incorporation, themselves, were not offered as evidence.
3. Applicant is exempt from the imposition of federal income tax under section 501 (c) (4) of the Internal Revenue Code. Applicant Ex. No. 1, pp. 1-3
4. The applicant's by-laws contain no mention of an organizational charitable purpose. Department Ex. No. 2, p. 1
5. Applicant is a membership organization. Id.
6. The activities of the *ABC* are centered, primarily, around social functions. Department Ex. No. 2, pp. 4, 5, 6; Applicant Ex. No. 1, pp. 5-7, 8, 9-13, 14, 15-16

Conclusions of Law:

The UTA and the ROTA provide for exemption from the imposition of the respective taxes on the gross receipts from the sale of tangible personal property to entities “organized and operated exclusively for charitable, religious, or educational purposes... .” 35 ILCS 105/3-5 (4); 120/2-5 (11) ABC requested an exemption number pursuant to these provisions, which the Department denied on the basis that the ABC did not demonstrate that it operated for exclusively charitable purposes.

The well-settled law in Illinois regarding taxation exemption is that a statute granting exemption must be strictly construed in favor of taxation and against exemption. Wyndemere Retirement Community v. Department of Revenue, 274 Ill. App. 3d 455, 459 (2nd Dist. 1995) Further, the exemption claimant has the burden of proving its entitlement clearly and conclusively (id.) with all facts construed and debatable questions resolved in favor of taxation. Id.

Although it was a case concerning a property tax exemption, Illinois courts have used guidelines set forth in Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149 (1968) in determining whether an entity qualifies as one organized and operated for charitable purposes. Wyndemere Retirement Community v. Department of Revenue, *supra*; Friends of Israel Defense Forces v. Department of Revenue, 315 Ill. App. 3d 298, 303-4 (1st Dist. 2000) These guidelines are that the entity: (1) has no capital, capital stock or shareholders; (2) earns no profit or dividends, but rather derived its funds mainly from public and private charity and holds them in trust for the objects and purposes expressed in its charter; (3) dispenses charity to all who need and apply for it; (4) does not provide gain or profit in any private sense to any person connected with it; and (5) does not

appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses. Methodist Old Peoples Home v. Korzen, *supra* at 156-7

Also, the term “exclusive” means the primary, and not incidental or secondary purpose. Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430, 436 (1st Dist. 1987) In addition, while there may be restrictions on a group benefited by the entity’s charity, “the service rendered to those eligible must act to relieve the public of an obligation, moral or economic, which it would otherwise have to such beneficiaries or it must confer some general benefit onto the public.” *Id.* at 435

It is acknowledged that the Methodist Old Peoples Home guidelines are not to be applied mechanically or technically. DuPage County board of Review v. Joint Comm’n on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 466 (2nd Dist. 1995) Rather, they are to be balanced with an overall focus on whether, and to what extent, applicant primarily serves non-exempt interests, such as those of its own dues-paying members (Rogers Park Post No. 108 v. Brenza, 8 Ill. 2d 286 (1956); Morton Temple Association v. Department of Revenue, 158 Ill. App. 3d 794 (3rd Dist. 1987)) or operates primarily in the public interest and lessens the State’s burden. DuPage County Board of Review v. Joint Comm’n on Accreditation of Healthcare Organizations, *supra*

In the instant matter, there is no question that the applicant has no capital, capital stock or shareholders. However, applicant has not carried its burden to convince that it satisfies the other guidelines.

Applicant’s CEO, Mrs. *Jane Doe*, testified on behalf of the applicant. Recognizing social problems in the home and the community, she testified, *inter alia*, that *ABC* is organized primarily for women so that they might understand their

“effectiveness...without using authority.” Tr. pp. 9, 10 (“we are training women to understand our effectiveness, and for them to know how effective they can be in their own world”) This is done by honoring their men, so that “he would step up to...his responsibilities. Because any time you make an individual feel like they are appreciated, make them feel like they are worthwhile, make them feel like you’re supporting them, you know, it will cause them to go forward and do even more.” Tr. p. 10 Clearly, the represented purpose¹ of *ABC* is laudable, however, good and sincere purpose does not, in and of itself, result in a legal determination that an entity is a charity. Rotary International v. Paschen, 14 Ill.2d 480, 488-9 (1958) (“It is firmly established in this State that the objects of a not-for-profit corporation may be commendable, yet not charitable.” (citations omitted))

An examination of applicant’s by-laws leads to a conclusion that it is a membership-based organization. Department Ex. No. 2 Of the seven paragraphs comprising the by-laws, six are directed specifically to members and their duties (*id.* at ¶¶ 1, 2, 3, 4, 6, 7) One of these duties is that of paying “monthly dues, unless hardship occur [sic]” *Id.* at ¶ 4 As to this point, Mrs. *Doe* testified that “when we first set the bylaws up, we said the members were expected to pay dues, but then afterwards some were experiencing hardships as we forestated [sic], so now we rely on them making donations to events and what have you. So we actually do not receive dues at this time.” Tr. pp. 25-6 *ABC*’s Illinois Charitable Organization Annual Report (Department Ex. No. 2, p. 2²) does show that no funds were received from government grants and membership dues. Instead, receipts in 2005, were overwhelmingly from payments for events.

¹ Articles of Incorporation wherein corporate purpose would be set forth were not submitted for the record.

² Applicant operates on a fiscal year ending on June 30. Department Ex. No. 2, p. 2 (Illinois Charitable Organization Annual Report, beginning 6/30/2003 and ending 6/30/2004)

Applicant Ex. No. 1, p. 16 It remains unclear, then, as to how applicant identifies its membership, to whom its by-laws are addressed, other than by payments to its events.

The evidence of record supports a conclusion that applicant's benefits are primarily social in nature and extend primarily to those who pay for participation. In correspondence with the Department, Mrs. *Doe*, as *ABC* President, related, in pertinent part:

This letter will express our need for the Tax Exemption based on our need for socialization and recreation in today's stressful society, which affects all relationships. Our main goal is to help unite families and bring release to this epidemic of tension. We have experienced the results of socializing in a relaxed atmosphere. Department Ex. No. 2, p. 4 (letter, August 17, 2001)

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ABC provides a program that edifies/encourages the man and woman also unifies/strengthen [sic] the family from a social and religious view.

ABC provides recreational activities in a good holsum [sic] stress-free atmosphere to socialize with others with same interests examples: family bowling, adult outing (chat parties, games playing, prized giveaway etc., personal counseling, also net-work with other charitable organizations providing individuals with food, clothing, shelter, etc. *Id.* at p. 5 (letter, November 14, 2001)

In further support of these conclusions is the fact that the major activities of *ABC* are social, in nature. It's largest expense in 2005 was its annual banquet (\$3,857.49). There was also a luncheon (\$675.00), a youth banquet (\$390.60) and a family picnic (\$439.10). The only other expenses were for mailings (\$148.23), office supplies (\$80.00) and for radio advertising time (\$1000.00). Donations for the period are listed as \$430.00.

Applicant Ex. No. 1, p. 16

As to these expenses, there is simply nothing of record to substantiate that persons other than those who could pay were permitted to attend the annual black-tie banquet.

The purpose of the luncheon was to network with other organizations “so we can come together and be more effective in our community.” Tr. p. 11 Again, there is no evidence of record to establish that this event was open to any person who could not pay the cost of the luncheon. Similarly, there is no evidence to support any conclusion that ABC’s family picnic was open to persons who did not pay to attend. Mrs. Doe’s testimony was that the youth luncheon (banquet) was made available to children at no cost to the children (Tr. p. 11) and that it was open to the community and not just members’ children. Tr. p. 35 However, there is nothing in the record as to how, *inter alia*, information regarding this luncheon was publicized to any people other than the membership, although the donation money received of \$430.00 seems to cover the cost of this event.³

As a result of the above, I conclude that applicant’s funds are generated by payments made by persons who wish to participate in the social functions through which applicant pursues its purposes, and not through public and private charity as delineated under Methodist Old People’s Home v. Korzen, *supra* Further, by not showing by clear and conclusive evidence that it makes charity available to those that need it, any charity that it might bestow is certainly self-limiting to whatever donations are received. Methodist Old People’s Home v. Korzen, *supra*; see also Highland Park Hospital v. Department of Revenue, 155 Ill. App. 3d 272 (2nd Dist. 1987) (those who might benefit from free care offered by hospital not made aware of hospital charity) Thus, I must also conclude that applicant places obstacles in the way of those who need and would avail themselves of the charitable benefits its dispenses.

³ Mrs. Doe testified that the applicant goes on the radio to let people know they can be part of the organization, and that the organization is open to “who so ever desire[sic] to be a part, who so ever desires

Lastly, while applicant's purposes serve to better the family unit, by, *inter alia*, instilling pride in the individuals, it does not appear that the State is compelled, by law, to pursue these same purposes. It cannot be said then that applicant is relieving a governmental burden.

I do not doubt that applicant is sincere in its efforts to strengthen the family unit by honoring men and setting and reinforcing moral guidelines and standards "from a biblical perspective." Tr. p. 35 But grants of tax exemptions are not based upon good intentions because each grant of exemption deprives the entire community and the State of funds needed to provide necessary services to everyone. As discussed above, tax exemption is the exception and not the rule, and statutes providing exemptions must be strictly construed in favor of taxation. This applicant has failed to clearly prove that it is organized and operated "exclusively" for charitable purposes. Rather, it is an organization that functions primarily for social purposes, limited to those who can pay to participate.

WHEREFORE, for the reasons stated above, I recommend that the Department's denial of a tax exemption identification number to the *ABC* Organization be affirmed.

Date: 11/3/2005

Mimi Brin
Administrative Law Judge

to receive our services." Tr. p. 35 I cannot conclude from this that the organization publicly advises that its functions are free other than, at best, the youth luncheon.